For further authorities upon the subject in general, see *Fourteen Diamond Rings* v. *U. S.*, 183 U. S. 176; *Dooley* v. *U. S.*, 182 U. S. 222; 41 *Am. L. Rev.* 239; *Malcolm, Philippine Constitutional Law,* 149-157; *Willoughby, Constitutional Law,* Ch. 24, 25, 29 and 30. D. H. B.

DECLARATORY JUDGMENT—DECLARING RIGHTS UNDER THE GUISE OF GRANTING AN INJUNCTION—It has often been held that a party may obtain a judicial determination of his rights in respect to legislation alleged to be invalid, by means of an application to a court of equity for an injunction restraining the enforcement of the statute. *Ex parte Young* (1907) 209 U. S. 123, is the leading case of this type. There, a railroad rate statute was involved, which required compliance by all railroad companies in the state, under the threat of heavy penalties. The railroad actually violated the provisions of the statute after an injunction had been obtained by a stockholder restraining the company from complying, and prosecution for the violation was prevented by an injunction against the attorney general. The latter injunction, it must be noted, was an effective and appropriate order, because acts of violation were in fact taking place which would otherwise have called forth action by the attorney general. The injunction could not, therefore, be looked upon as anything but a genuinely operative remedy. *Truax* v. *Raich* (1915) 239 U. S. 33, *Michigan Salt Works* v. *Baird* (1913) 173 Mich. 655, and other like cases, were all similar in this respect. In each, the act for which the prosecution was feared had been committed, and the injunction was employed as a protection against a presently possible prosecution.

But let it be supposed that the case is one where no violation of the statute has taken place and where none is contemplated until after the court has passed upon its validity. Is there anything to enjoin? The attorney general cannot prosecute because nothing has been done upon which to base a prosecution. Can the attorney general be enjoined from prosecuting before any violation or even threat of violation has occurred?

In *Anway* v. *Grand Rapids Ry. Co.* (1920) 211 Mich. 592, an effort was made to obtain a decision from the court as to whether a contract could legally be made which the plaintiff alleged that he was desirous of making. The plaintiff feared the penalties of a statute. He had no intention of entering into the proposed contract unless he was first assured by the court that he would not be liable for the penalty. He asked for a declaration of rights, under the Declaratory Judgment Act, and got it, but the supreme court held that at this stage there was no controversy pending, and that the declaration was only a decision on a moot question and therefore invalid. Apparently it was the view of the supreme court of Michigan that until the plaintiff did some act upon which the penal statute could operate, there could be no judicial question. In this view of the proceedings the addition of a prayer for an injunction against the attorney general would have added nothing to the substance of the case, for no prosecution was possible because there was no violation of the statute, either actual or threatened. The infirmity in the case was held to go much deeper than a mere procedural failure to add a suitable prayer. The court held that there was no cause of action in existence

which could be employed by the plaintiff in a court of justice.

A case identical on its facts with the *Anway Case* has just been decided by the United States District Court for the Western District of Washington, three judges sitting and concurring. *Terrace* v. *Thompson* (1921) 274 Fed. 841. In that case the owners of certain land wished to lease it to a Japanese. A statute known as the Alien Land Bill in terms prohibited such a lease under heavy penalties, but the parties believed the apparent prohibition was not legally effective. They were not willing, however, to make the lease unless the court first assured them that it could safely be done, and they joined as complainants in a bill in equity, making the attorney general a party defendant, and asked for an injunction restraining the defendant from prosecuting under the statute. The court cited *Ex parte Young, supra,* as authority for taking jurisdiction, and the rights of the parties were determined. As in the *Anway Case,* no act had been done by the complainants contrary to the statute. No prosecution was therefore possible, and the complainants made it clear in their bill that they did not propose to render themselves liable to any prosecution. The attorney general was therefore enjoined from an impossibility, viz., from suing on a cause of action which not only did not exist but was not threatened or even contemplated. The injunction was therefore essentially premature, and apparently served only as a cloak to hide a mere declaration of rights. The court held that where parties contemplate entering into a contract which may or may not amount to a violation of a penal statute, the court will, in advance of any act on their part which could be deemed wrongful, pass upon their rights and tell them whether their contemplated action will or will not be a violation of the act. This is a pure declaration of rights, and it was made in this case as an exercise of inherent judicial power, without any authorizing statute. E. R. S.

JOINT TENANCY IN PERSONAL PROPERTY IN MICHIGAN—In *Lober* v. *Dorgan,* 215 Mich. 62, decided July 19, 1921, the court again wrestled with the problem which has troubled the Michigan courts for many years, as to whether the law of the state recognizes any such thing as joint ownership in personal property with the common law incident of survivorship. The facts presented a controversy between the estates of husband and wife, the latter having survived the former. A real estate mortgage had been given to "George W. Bush and Sarah Bush, his wife, of Gobleville, Michigan, as joint tenants, with sole right to the survivor." After the husband's death Mrs. Bush collected part of the sum due and the suit was for an accounting as to the sum so collected. It was held, Steere, C. J., and Fellows and Stone, JJ., dissenting, that Mrs. Bush by right of survivorship was entitled to the whole sum.

In arriving at this conclusion it was necessary for the majority either to repudiate *Ludwig* v. *Bruner,* 203 Mich. 556 (1918), or to distinguish it. The latter course was taken, and the distinction in facts seized upon was the presence in the *Lober* case mortgage of the words "with the sole right to the survivor." In the principal case Bird, J., does not go so far as to say that a joint tenancy in personal property with the common law incident of survivorship may be created in Michigan; he merely holds that the parties to the mortgage